THE ONTARIO BOUNDARIES.

A Conspiracy to Despoil the Province of Half its Territory.

Sir John Macdonald's Crooked Record on the Subject—Quebec Tories Arrayed Against Ontario—Repudiation of a Solemn Award—A Question of Good Faith and Public Honor.

There are higher considerations involved in the Ontario Boundary question than the territory in dispute between the Province and the Dominion, and declared to be part of the Province by the unanimous award of the arbitrators to whom the dispute was referred for settlement. The honor and good faith of the Dominion are higher considerations, and both are at stake; the permanency and future well-being of the Union are of greater consequence, and both are in jeopardy.

Sir John Macdonald and his Tory adherents have done their part. So far as any act of theirs could do so, they have committed the Dominion to a policy of dishonor. They have by resolution of Parliament repudiated a solemn award; it is now the people's turn to repudiate them. They have broken faith with one of the Provinces of the Union by violating a compact made and ratified as between one nation and another; it is now the people's turn to declare by an emphatic voice and vote that it has no faith in them. The time has come to wipe out the stain of a shameless act by punishing the authors of it.

The facts of the Boundary question, as they are set forth in the following narrative, show how utterly unworthy of public confidence Sir John Macdonald and his Tory supporters in the late Parliament are. They have done what they could to humiliate the country, and to trample its honor in the dust. The people can redress that great wrong, and the leaders of the Liberal party have confidence that they will.

AN OLD CLAIM TO TERRITORY.

It is well known that Old Canada always disputed the pretensions of the Hudson's Bay Company to right of ownership in the North-West Territories. The people of the United Provinces always maintained that they were the successors of France in the North-West, and in the country north of the water-shed to Hudson's Bay. Upon this and other grounds the North-West Company contested the claims of the Hudson's Bay Company, and continued to do so until the dispute was settled by their partnership.

THE QUESTION RAISED AGAIN.

As the territories lay far beyond the limits of settlement in Upper Canada, the question was not again raised until the time arrived for considering the renewal of the lease granted to the Company in 1838.

This was late in 1856, when the Secretary of the Colonies informed the Governor-General of Canada that Her Majesty's Government had determined on bringing the whole subject under the investigation of a Committee of the House of Commons ; and His Excellency was instructed to consider, with the advice of his Council, the question whether it might be desirable to send witnesses to appear before the Committee, or in any other manner to cause the views of his Government and the interests of Canada to be represented there.

CANADA'S CLAIMS ASSERTED.

In reply to the Colonial Secretary's despatch, a minute of Council was transmitted, stating amongst other things that " the general feeling here is strongly that *the western boundary of Canada extends to the Pacific Ocean ;*" that the Committee of Council were most anxious that Canadian interests should be properly represented before the proposed Committee of the House ; that situated as Canada was, she necessarily had an immediate interest in every portion of British North America ; and that the question of jurisdiction and title claimed by the Hudson's Bay Company was to her of paramount importance. The Canadian Prime Minister of that time, it may be remarked, was Mr. John A. Macdonald.

THE LIMITS NORTH AND WEST.

In the same year (1857) an official paper was prepared by the Commissioner of Crown Lands, claiming that the westerly boundary of the Province extended as far as British territory not otherwise organized would carry it, *which would be to the Pacific;* or, if limited at all, it would be by the first waters of the Mississippi, which a due west line from the Lake of the Woods intersected, which would be the White Earth River. With respect to the northerly boundary, the Commissioner pointed out as the only possible conclusion that Canada was either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory was a myth, and consequently that Canada had no particular limit in that direction.

CANADA'S SPECIAL AGENT TO ENGLAND.

In response to the Colonial Secretary's invitation, the Government sent Hon. Chief Justice Draper as a special agent to represent Canadian interests before the House of Commons Committee. He was examined before the Committee, and gave evidence against the claims of the Company. Afterwards Justice Draper reported to the Canadian Government, and gave as his opinion that Canada had a *clear right*, under the Act of 1774 and the proclamation of 1791, to the whole country *as far west as the line of the Mississippi*, and to a considerable distance north of the water-shed ; and he recommended that the opinion of the Judicial Committee of the Privy Council should be obtained upon the merits of the dispute.

AN ABORTIVE MOVE.

In August, 1858, a joint address of both Houses was forwarded to the Queen, in which it was stated that, in the opinion of Parliament, Canada had a right to claim, as forming part of her territory, a considerable portion of the country then held by the Hudson's Bay Company, and that a settlement of the boundary line was immediately required. The law officers of the Crown were consulted on the subject by the Colonial Secretary during the previous year, and they expressed the opinion that, while a decision of the Judicial Committee of the Privy

Council might be useful in showing what were the merits of the pretensions of the respective parties, it could have no binding effect, and that an Act of the Imperial Parliament would be necessary to finally settle the question. But the Company, though strongly urged thereto by the Secretary, refused to be parties to a reference which would raise any question as to the validity of their charter, and no issue was reached. Sir John Macdonald, from inattention to the subject, seems to have fallen of late into the error of supposing that the Queen, upon the advice of the Judicial Committee of the Privy Council, could give a decision binding on every body, which of course it could not.

A COMPROMISE SETTLEMENT ADVISED.

The time of the Judicial Committee is so largely taken up with the consideration of judicial questions referred to them by appeal, that the propriety of inviting a report upon the matter in dispute between the Canadian Government and the Hudson's Bay Company was felt to be more than doubtful. The question was complicated, the evidence was voluminous, and it was feared that a long time must elapse before a decision could be had. Accordingly, in 1865, the Canadian Ministers, in a report made to the Governor-General, expressed the opinion that it would be in the interest of the country to grant to the Company a moderate compensation rather than submit to the evils of delay consequent upon a reference to the Committee ; but no action was taken upon the report.

STILL ASSERTING CANADA'S RIGHTS.

After Confederation the claims to the territory made by the old Province of Canada continued to be made by the Dominion Government, Sir John Macdonald being Prime Minister. In the first session of Parliament a joint address was presented to Her Majesty by the House of Commons and Senate, praying that she would be graciously pleased to unite Rupert's Land and the North-Western Territory to the Dominion. So little value did Sir John Macdonald then place upon the title of the Company that he urged the transfer of the whole country to Canada, leaving the Company no right, except the right of asserting their title in the best way they could in the Canadian courts. "And what," he asked, "would their title be worth the moment it was known that the country belonged to Canada, and that the Canadian Government and Canadian courts had jurisdiction there, and that the chief protection of the Hudson's Bay Company and the value of their property, namely, their exclusive right of trading in those regions, was gone forever? The Company would only be too glad that the country should be handed over to Canada, and would be ready to enter into any reasonable arrangement." He failed to get the territory handed over to Canada on those terms, but he succeeded in incurring the ill-will of the Company's agents, and of the settlers in the North-West, and in stirring up a rebellion which cost the country more than a million of dollars.

SQUATTERS ON THE SOIL.

In October, 1868, Sir George Cartier and the Hon. Wm. Macdougall proceeded to England to press the views of the Government on the Colonial Secretary. In their correspondence with the Colonial Office the rights of Canada were asserted in strong terms. Referring to a road between Lake of the Woods and Fort Garry, on Red River, upon which the Dominion Government had expended $20,000 in 1868, Sir George Cartier and Mr. Macdougall said *there was no doubt that it*,

lay within the limits of Canada; and, concerning the extent of the Province, they declared in the same letter to the Secretary that "No impartial investigator of the evidence in the case can doubt that it extended to and included the country between Lake of the Woods and Red River." The Government of Canada, they said, denied and had always denied the pretensions of the Company to "any right of soil beyond that of squatters" in the territory through which the Lake of the Woods and Fort Garry road was being constructed.

THE COMPANY'S CLAIM GIVEN UP.

So strong were the grounds on which the contention of the Canadian Government rested that the Hudson's Bay Company, composed of some of the shrewdest business men of England, and acting under advice of the ablest counsel, gave up their claim to 1,300,000 square miles of territory in consideration of being allowed to retain 12,000 square miles of it, and of receiving £300,000 sterling—about one-fifth of the sum paid by the United States for the comparatively barren region of Alaska, of less than one-fourth the area. The company feared that the legal boundaries of Ontario, if submitted to an impartial tribunal, would be held to include the bulk of territory which Canadian Ministers claimed for it; hence the small sum for which they agreed to release their interest.

ADMITTED INTO THE UNION.

Rupert's Land and the North-West Territory were admitted into the Union by an Imperial Order-in-Council, dated 23rd June, 1870, subject to the provisions of the British North America Act. The Order-in-Council did not and could not take away any part of Ontario's territory, for the B. N. A. Act specifically declares that the territory "which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario." There is, therefore, no doubt whatever that the boundaries of Ontario to the north and west are the old boundaries of Upper Canada.

A NEW DEPARTURE.

It has been shown that up to the time of the admission of the North-West into the Union the successive Governments of which Sir John Macdonald was leader maintained for Upper Canada (the Ontario of Confederation) limits far to the west and to the north of those which his Government is willing to allow her. But, within the brief period of two years after the bargain with the Hudson Bay Company was concluded, the views of Sir John Macdonald and his fellow-ministers underwent a great and sudden change; a new departure was taken, and they sought to grasp from the Province a territory many thousand square miles in extent, a part of which the Company had never claimed under its charter. Some steps had been taken for defining the boundary in 1871, and Commissioners had been named by the Local and Federal Governments to locate the line. Nothing further was done that year, and before its close a new Administration was formed in the Province with Mr. Blake at its head. Then

THE POLICY OF HOSTILITY

towards Ontario began to develop itself. Sir John Macdonald was bent on breaking down the Liberal Government of the Province if he could, and from that day to the present he has shown himself to be the unceasing enemy of Ontario and its rights. On the 6th of January, 1872, the new Government asked that a draft of the instructions to the Dominion Commissioner be transmitted for consideration. The request

was complied with on the 14th of March, and then it became known that the Dominion Government insisted on a line drawn due north from the junction of the Ohio and Mississippi rivers as the westerly boundary, and on the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valley of the great lakes as the northerly boundary of the Province. The Ontario Government declined to accept those limits, claiming that the boundary line was very different from the one defined by the Dominion Government's instructions, and its Commissioner was instructed to abstain from any further action under his commission. A conventional or compromise boundary proposed by the Provincial Government met with no response—Sir John Macdonald apparently forgetting the fact that the Government of which he was a member was prepared to make a compromise with the Hudson's Bay Company in 1865.

SUGGESTION AND COUNTER SUGGESTION.

In a memorandum of 1st May, Sir John Macdonald suggested that the Government of Ontario be invited to concur in the statement of a case for immediate reference to the Judicial Committee of the Privy Council of England, with a view to settle the boundaries by a judgment or decision of that tribunal. On 31st May the Ontario Government in reply stated that the settlement of the question depended upon numerous facts, the evidence as to many of which was procurable only in America, and the collection of which would involve the expenditure of much time. They therefore recommended as a counter suggestion that, should the Government of Canada decline to negotiate for a conventional line, the more satisfactory way of settling the question would be by reference to a Commission sitting on this side of the Atlantic. On November 7th the proposition of the Dominion Government for a reference to her Majesty in Council was renewed, but no further negotiations took place until the accession of Mr. Mackenzie to office.

THE ARBITRATION.

In 1874 both Governments agreed to leave the question to arbitration, and to accept the award as final and conclusive. Ex-Governor Wilmot, of New Brunswick, was chosen for the Dominion, and Chief Justice Richards for Ontario—Sir Edward Thornton, the British Ambassador at Washington, being accepted by the two Governments as third arbitrator. Information was from time to time given to Parliament and the Legislature with respect to the progress of arrangements for this reference, and the policy of fixing the boundaries by arbitration was never questioned. Sir John Macdonald once, in the debate on the North-West Territories Bill in 1875, expressed regret that the matter had not been referred to the Privy Council, but added that the arbitrators "would be acceptable, he was satisfied, to the country, as they were to himself." The sum of $15,000 was also voted by Parliament for defraying the expenses of the arbitration, and no question was raised or objection made. The death of one arbitrator and the resignation of another was followed by the appointment of Sir Francis Hincks for the Dominion, and Chief Justice Harrison for Ontario. Both appointments were confirmed by Orders-in-Council, and it was again declared that the determination of the three referees should be final and conclusive; and by the Order-in-Council of 1874, *each Government agreed with the other for concurrent action* in obtaining such legislation as might be necessary for giving binding effect to the conclusions arrived at.

THE AWARD OF THE ARBITRATORS.

From 1874 to 1878 both Governments were occupied in making an exhaustive collection of all the documents, facts and evidence bearing upon the controversy, all of which were printed for the purpose of the arbitration. Counsel for the two Governments were heard by the arbitrators, and on August 3rd, 1878, *a unanimous award was delivered, determining and deciding what are and shall be the northerly and westerly boundaries of Ontario.* The westerly boundary was declared to be a line drawn due north from the most north-westerly angle of Lake of the Woods, and the northerly boundary the southern shore of James' Bay, the Albany River, and the English River. It gave to the Province on the westerly side the least favorable limit that on the facts and evidence was possible, as was demonstrated by a mass of evidence which there appears no danger of ever seeing overcome.

The Government of Ontario accepted the award, not because it assigned to the Province all that was claimed on its behalf, but because, consistently with good faith and public honor, neither party to the arbitration could refuse to abide by the decision.

SHILLY-SHALLYING.

Mr. Mackenzie's Administration was defeated at the general elections of September, 1878—less than two months after the boundary award was made—and a few weeks later Sir John Macdonald formed a new Administration. One of his first acts as Minister of the Interior was to publish a map in which the boundaries of Ontario were laid down as fixed by the award; but *the old hostility soon manifested itself afresh*, and, backed by Sir Hector Langevin and the phalanx of Quebec Tories, the Premier found courage to pursue towards the Liberal Government of Ontario a policy of studied contempt. At least eight despatches from the Lieutenant-Governor of that Province, bearing on the award and urging the necessity of action being taken by the Dominion Government in the interests of law and order in the disputed territory, were

TREATED WITH UNMANNERLY NEGLECT.

Their receipt was formally acknowledged, but no answer was made nor further notice taken of any of them. It made no difference that law was being set at defiance in the territory, that crime went unpunished, that drunkenness and immorality prevailed, that public lands were being robbed of their timber, or that there was no security for life or property. For three years Sir John Macdonald and his colleagues refused to have any dealings with the Government of Ontario on the subject. A ninth despatch was sent on the 31st December of last year, and on the 12th January this year the Legislature of the Province met. The debate on the address opened out a discussion of the whole situation and all the circumstances, and then the Tory Premier of the Dominion discovered that he could pursue a policy of silent contempt no longer. He was forced to show his colors openly, and in the light of day.

REPUDIATION OFFICIALLY DECLARED.

A reply to the despatch of 31st December was sent on the 27th January, and the Government and people of Ontario were informed officially, what had been evident for some time, that the Dominion Government had determined, in violation of good faith and public honor, to *repudiate the award.* This course had been indicated by the

conduct of the Government in the session of 1880, in consenting to a Parliamentary Committee for the professed object of inquiring into and reporting upon all matters connected with the Ontario boundaries. No new or material evidence was obtained by the committee, but by a party vote the opinion was expressed in its report that the award did not describe the true boundaries of Ontario, and that it included within that Province territory to which, the Committee asserted, the Province was not entitled.

ENLARGING MANITOBA.

This action was followed up in the session of 1881 by a Government measure enlarging the boundaries of Manitoba. Sir Alexander Campbell, when introducing the Bill in the Senate, plainly affirmed that the intention was to give to that Province the whole tract of country eastward as far as the meridional line claimed by the Dominion Government to be the westerly limit of Ontario, embracing a territory 39,000 square miles in extent, which had been declared to be part of Ontario by the award of the arbitrators. In the House of Commons Sir John Macdonald avowed as an object of the Bill that it would "compel" the Government of Ontario not to insist on the awarded boundaries, and he assured the House that the Government of that Province would "come to terms quickly enough when they find they must do so." This undertaking to "bulldoze" Ontario was of a piece with the undertaking to "bulldoze" the Hudson's Bay Company ten or twelve years previously.

ALLEGED REASONS FOR REJECTING THE AWARD.

The alleged reasons of the Dominion Government for rejecting the award are, that the reference to arbitration "transcended the power of the Government of the day;" that the matter should be "considered rigidly as one of law;" and that His Excellency's present advisers were opposed to "disposing of the question by arbitration," conceiving that mode to be "inexpedient and lacking in legal authority." It is a sufficient answer to those objections to say that the reference was made with the knowledge of the Dominion Parliament; that the Dominion Parliament not only made no objection, but in 1878 voted $15,000 to pay the expenses of the arbitration without a word of dissent; and that both Governments concerned pledged their good faith to a settlement of the question procured in this way. A further answer is, that arbitration is the usual way of settling such disputes, and that it is a reasonable way. The boundary between Canada and New Brunswick was settled by arbitration; so also was the San Juan dispute. Sir John Macdonald himself was a party to referring the San Juan question. Even now he proposes, after repudiating the award of one set of arbitrators, to refer the dispute to another set—to some "eminent English legal functionary," or to the Judicial Committee of the Privy Council, neither of which could give a decision in any way more binding than the one already given.

THE TRUE LEGAL LIMITS DECLARED.

But it is said the award established a conventional line instead of a legal one. That is not true. All the evidence was considered and the arguments of counsel heard. The arbitrators were appointed to find the true legal limits of the Province, and their award declares that they found it. *They did not give advice, but they pronounced a decision.* On what pretence, then, of reason or justice can a demand be made for re-opening the case? If the Government of Canada do not feel them-

selves in honor and good faith bound by the award which has already been made, Ontario has no reason to suppose that they would not *quite as readily repudiate any subsequent decision.*

ATTITUDE OF THE QUEBEC TORIES.

Sir Hector Langevin has put his foot on the award because he professes to fear that it would give Ontario too great strength in the Confederation, which would increase with the development of its territory. His real motive is a desire to break down the Liberal Government of Ontario, and so ensure the continuance of Tory misrule in the Dominion. *He and his Tory following have influenced the press of their Province to create a feeling against the award and to cry down as traitors the Quebec Liberals who voted against re-opening the boundary case and breaking faith with one of the Provinces of the Union.* It is hatred and jealousy of Liberal progress in Ontario that prompts the hostility of Quebec Tories to the award, and Ontario Tories, obedient to the crack of Sir John Macdonald's whip, have joined hands in repudiating it by their votes on Mr. Plumb's motion to re-open the case and to refer it to another tribunal.

IS ONTARIO TOO LARGE ?

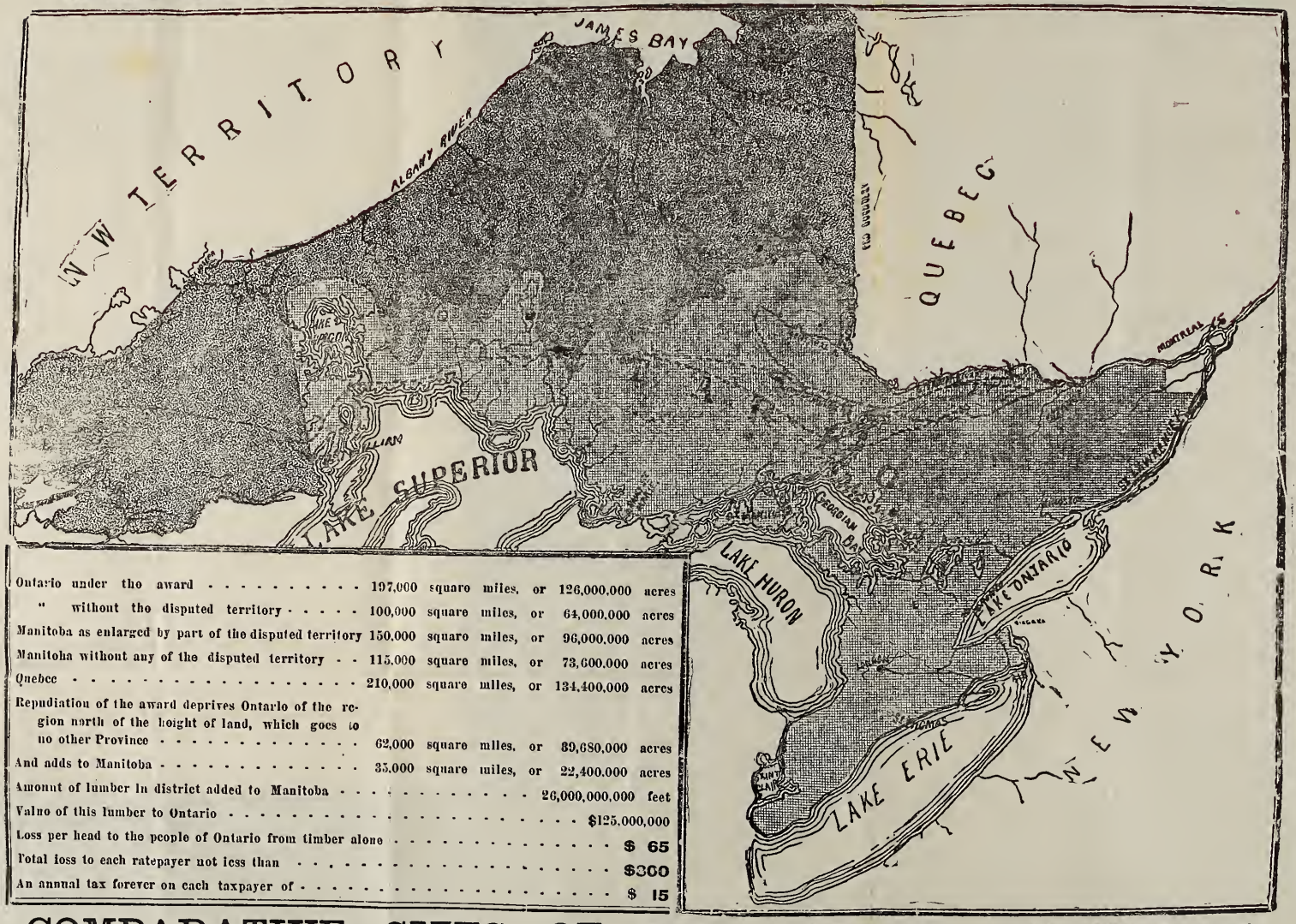
But is Ontario too large, as the Quebec Tories profess to fear ? Whatever was her extent as the Province of Upper Canada, that is her extent now, and she is entitled to her full measure of territory, be it great or small. She has never shown a disposition to be unjust to other Provinces of the Union, or to rule by the right of the strongest. How dose she compare in area with the other Provinces ? The diagrams on the folded sheet annexed will illustrate at a glance their relative extent, and will show that Ontario, with all the territory given by the award, is still smaller than Quebec or British Columbia. The estimates of timber in the district have been given in public documents published under the anthority of both Governments, and they have not been challenged.

The loss of the territory in dispute, it will be seen, would reduce the area of Ontario to 100,000 square miles. *Why should the area of that Province be reduced to less than half the area of Quebec? or to less than one-third the area of British Columbia? Or why should the area of Ontario be reduced, and that of Manitoba extended, until Manitoba shall have an area one-half greater than Ontario?* Can Sir Hector Langevin and the Quebec Tories, who say that Ontario would be too large, answer these questions ?

THE QUESTION AS A POLITICAL ISSUE.

Liberals, fair-minded men, honorable men, and true Canadians in all Provinces of the Dominion, have a vital interest in maintaining the cause of Ontario in the present struggle. The independence, if not the very existence, of the Local Governments is at stake. If they are to be crushed out on any pretence by an adverse political party in office at Ottawa, what guarantee is there for the maintenance of self-government and provincial rights ? What guarantee is there for the preservation of Home Rule in the Provinces ? To tolerate such conduct on the part of the Dominion Government is not only to place a premium on public dishonor, but to prepare the way for the disruption and dismemberment of the Union. Were any independent State to pursue the course towards another which the Government of Canada has

ONTARIO AND THE DISPUTED TERRITORY.



Ontario under the award	197,000 square miles,	or	126,000,000 acres
" without the disputed territory	100,000 square miles,	or	64,000,000 acres
Manitoba as enlarged by part of the disputed territory	150,000 square miles,	or	96,000,000 acres
Manitoba without any of the disputed territory	115,000 square miles,	or	73,600,000 acres
Quebec	210,000 square miles,	or	134,400,000 acres
Repudiation of the award deprives Ontario of the region north of the height of land, which goes to no other Province	62,000 square miles,	or	39,680,000 acres
And adds to Manitoba	35,000 square miles,	or	22,400,000 acres
Amount of lumber in district added to Manitoba	26,000,000,000 feet		
Value of this lumber to Ontario	$125,000,000		
Loss per head to the people of Ontario from timber alone	$ 65		
Total loss to each ratepayer not less than	$300		
An annual tax forever on each taxpayer of	$ 15		

COMPARATIVE SIZES OF THE LARGER PROVINCES.

BRITISH COLUMBIA.
Area 400,000 Square Miles.
Or 256,000,000 Acres.

QUEBEC.
Area 210,000 Square Miles.
Or 134,400,000 Acres.

ONTARIO,
MINUS THE AWARD.
Area 100,000 Sq. Miles,
Or 64,000,000 Acrs

ONTARIO,
WITH THE AWARD.
Area 197,000 Square Miles,
Or 126,000,000 Acres.

MANITOBA,
WITHOUT DISPUTED TERRITORY.
Area 115,000 Square Miles.
Or 73,600,000 Acres.

MANITOBA.
WITH ONTARIO TERRITORY.
Area 150,000 Square Miles,
Or 96,000,000 Acres

The above "squares," based upon a scale of 100,000 square miles to the inch, show at a glance the relative sizes of the four Provinces of British Columbia, Quebec, Ontario, and Manitoba; of the Province of Ontario, with and without the disputed territory; and lastly of the Province of Manitoba, as enlarged (without disputed territory), and with the disputed territory.

the course towards another which the Government of Canada has

adopted towards the Province of Ontario, it would be held guilty of a gross breach of faith—of dishonorable conduct which would lead to an immediate discontinuance of all diplomatic relations.

AS AN ONTARIO ISSUE,

the Boundary question concerns every man within its borders. It is not merely whether that Province shall be ruled by one party or another, but whether she shall be despoiled of half her territory—of a country rich in mineral and forest wealth, which may be to her Government a source of revenue for all time. That is a large consideration to pay for the doubtful gain of defeating Mr. Mowat's Government, and gratifying the hatred of Sir John Macdonald and his Quebec allies. *Every Ontario man who voted for Mr. Plumb's motion should be a marked man in his constituency;* he should be regarded as an enemy of his Province, and he should receive at the hands of the people an enemy's reward.

PROVINCIAL RIGHTS.

The Tory Government's Attempt to Destroy Home Rule in Canada.

Disallowance of the Rivers and Streams Bill—Sir John Macdonald's Former Opinions on Interference with Provincial Legislation—Tory Hostility to Ontario.

The fullest liberty of action by the Provinces, within their true constitutional limits, is the only safety of the federal system in Canada. The British North America Act of 1867 was a solemn compact, under which local control over local affairs was guaranteed. Under that Act the Dominion Government has no just right to interfere with the constitutional legislation of the Provinces any more than a Local Government would have to interfere with the legislation of a municipal council.

When the question of Confederation was under discussion, the necessity of allowing the fullest liberty of action to the Provinces within their own jurisdiction was frequently pointed out, and no sooner had we entered upon a trial of the new system than the propriety of defining the grounds which would justify interference with local legislation became apparent.

SIR JOHN MACDONALD'S VIEW IN 1868.

On the 8th of January, 1868, Sir John Macdonald prepared a State paper in which he dealt with the question of disallowance as follows :

"In deciding whether any Act of a Provincial Legislature should be disallowed or sanctioned, the Government must not only consider whether it affects the interest of the whole Dominion or not, but also whether it be unconstitutional; whether it exceeds the jurisdiction conferred on the Local Legislature, and, in cases where the jurisdiction is concurrent, whether it clashes with the legislation of the general Parliament.

"As it is of importance that *the course of local legislation should be interfered with as little as possible*, and the power of disallowance exercised with great caution, and only in cases where the law and general interests of the Dominion *imperatively* demand it, the undersigned recommends that the following course be pursued:

"That on the receipt by your Excellency of the Acts passed in any Province, they be referred to the Minister of Justice for report, and that he, with all convenient speed, do report as to those Acts which he considers free from objection of any kind, and, if such report be approved by Your Excellency in Council, that such approval be forthwith communicated to the Provincial Government.

"That he make a separate report or separate reports on those Acts which he may consider:

"1. As being altogether illegal or unconstitutional.

"2. As being illegal or unconstitutional only in part.

"3. In cases of concurrent jurisdiction, as clashing with the legislation of the general Parliament.

"4. As affecting the interests of the Dominion generally. And that in such report or reports he gives his reasons for his opinions."

Here we have a clear exposition of the grounds on which local legislation was to be disallowed. On this basis the federal system was to be reared; provincial rights were to be preserved; and within their own jurisdiction the various Local Legislatures were to be absolutely free from all interference. Sir John Macdonald himself contended for the same principle in 1872, when the question of disallowing the New Brunswick School Bill came before him. His contention was then, as it had been in 1868, that provincial rights were sacredly guarded by the Constitution, and must not be invaded by the Executive.

SIR JOHN MACDONALD'S VIEW IN 1872.

Speaking in the House of Commons on this question, he said:

"The Provinces have their rights, and the question was not whether this House thought a Local Legislature was right or wrong. But the whole question for this House to consider, whenever such a question as this was brought up, was that they should say at once that they had no right to interfere so long as the different Provincial Legislatures acted within the bounds of the authority which the Constitution gave them. (Hear, hear.) There was this fixed principle—that every Provincial Legislature should feel that, when it was legislating, it was legislating in the reality and not in the sham. If they did not know and feel that the measures they were arguing, discussing, and amending, and modifying to suit their own people would become law, *it was all sham*, and the federal system was gone forever. If this House undertook the great responsibility of interfering with the local laws, they must be prepared to discuss the justice or injustice of every law passed by every Provincial Legislature—(hear, hear)—and this Legislature, instead of being, as now, the General Court of Parliament for the decision of great Dominion questions, would be simply a Court of Appeal to try whether the Provincial Legislatures were right or wrong in the conclusions to which they came. (Hear, hear.) If this House was prepared to take that course and adopt that principle, then the Government of the day, while it would have much more responsibility, would also have *much more power;* for, besides conducting and administering the affairs of the whole Dominion as one great country, it would also have *the power, the authority and the control of a majority over every Bill, every Act, every conclusion, every institution, every right of every Province in Canada.*"

With this view of Provincial authority the Liberal party agreed, and on this view Sir John Macdonald acted in every instance, from Confederation down to the disallowance of the Streams Bill.

HISTORY OF THE STREAMS BILL.

On the 4th of March, 1881, the Ontario Legislature passed "An Act for protecting the Public Interests in Rivers, Streams, and Creeks."

Section 1 of this Act provided that "So far as the Legislature of Ontario has authority so to enact, all persons shall, subject to the provisions in this Act contained, have, and are hereby declared always to have had, during the spring, summer and autumn freshets, the right to, and may float and transmit saw logs and all other timber of every

kind, and all rafts and crafts, down *all rivers, creeks and streams in respect of which the Legislature of Ontario has authority to give this power.*"

Section 2 provided that any person may use all rivers, creeks and streams on which improvements had been made, for floating timber during the spring, summer and autumn freshets, "*subject to the payment to the person who has made such improvements of reasonable tolls.*"

Section 3 applied the above provisions alike to patented and unpatented lands.

Section 4 provided that "the Lieutenant-Governor in Council may fix the amounts which any person entitled to tolls under this Act shall be at liberty to charge on the saw logs and different kinds of timber rafts or crafts, and may from time to time vary the same; and the Lieutenant-Governor in Council, in fixing such tolls, shall have regard to and take into consideration *the original cost of such constructions and improvements, the amount required to maintain the same and to cover interest upon the original cost, as well as such other matters as under all the circumstances may* to the Lieutenant-Governor in Council *seem just and equitable.*"

Section 5 applied the above provisions of the Act to improvements made or hereafter to be made.

Section 6 provided that any person making improvements was to have *a lien upon logs or timber passing through the improvements, for his tolls.*

Section 8 provided that *the person who had the right to collect tolls should also have the right to make rules for passing the timber through or over his works* subject to the approval of the Governor in Council.

THE ACT JUST AND EQUAL.

In looking at the various sections of this Act, the following points are worthy of notice.

1. From section 1 it is quite clear that the Act applies to all streams alike—and that the privilege of floating logs, etc., down those streams is open to all persons alike, subject, of course, to the provisions of the Act.

2. By section 2 it is declared that the mere construction of works on a stream to facilitate the passage of logs, etc., does not give to the person constructing such works an exclusive right to the use of the stream. In other words, the stream is regarded by law as a public highway, improvements on which do not exclude the public from the right to use it.

3. That while the construction of works to improve the floatability of streams does not give the party so improving them an exclusive right to their use, *it debars all others from using such works without paying for the privilege.*

4. That the tolls to be paid for using such streams are to be regulated by the Lieutenant-Governor in Council, and in fixing such tolls he is to take into consideration the cost of building and maintaining the works, the interest on the outlay, and such other matters as may be thought just to all parties.

5. That the logs floated through such improvements may be held as security for the payment of all such charges.

6. That rules may be made by the person owning the works for regulating the passage of logs, so that one man's timber may not interfere with the free movement of another man's; such regulations being subject to the approval of the Lieutenant-Governor in Council.

A REASONABLE ACT.

The justice of such an Act must be apparent to every person. It would be monstrous to permit any man, taking possession of a stream and building works to improve its floatability, to shut out from the markets of the world all owners of timber limits lying up the stream. The people of Ontario have direct interest in such legislation. The revenue which goes into the Provincial treasury from woods and forests amounts to over half a million dollars annually. To allow any person to shut out lumber that must reach the market, if it reaches it at all, through streams on which some other person has made improvements, would be to deprive the Province of a portion of its legitimate revenue and the public of a most important right.

NECESSITY FOR THE ACT.

The necessity for such an Act in the public interest was first shown by a difficulty existing between two lumbermen owning large timber limits on the Mississippi—a tributary of the Ottawa. It seems that one of them, Peter McLaren, had made certain improvements on this river for his own benefit and at his own cost. H. C. Caldwell, the other, owned limits above McLaren, and in order to get his timber to the market it was absolutely necessary to pass through McLaren's slides. He was willing to pay for the use of McLaren's improvements, but was refused leave ; and lest he should proceed to use them, McLaren applied to the Court of Chancery for an injunction to restrain him. The case was before the Courts when the Streams Bill passed the Ontario Legislature. Under the Act Caldwell or any one else would have the right to use McLaren's improvements by paying for the use of them. The only way McLaren could prevent this just privilege was to secure

THE DISALLOWANCE OF THE BILL.

He is a well known and influential supporter of Sir John's ; his counsel also was a prominent member of the party ; and no matter how much the public, as well as Caldwell, might be inconvenienced, or how much the revenue of Ontario might suffer, the disallowance of the Bill must be secured. Accordingly McLaren petitioned the Minister of Justice, and on the 17th of May, six weeks after the Bill had been assented to—without giving notice to the Government of Ontario, as Sir John Macdonald declared in 1868 should be done and as had always before been done, and without waiting for the pending decision of the Court of Appeal, given on July 8 following against McLaren's claims —the Minister of Justice, the Hon. James Macdonald, recommended the disallowance of the Bill in the following terms :

"I think the power of the Local Legislature to take away the rights of one man and vest them in another, as is done by this Act, is exceedingly doubtful ; but assuming that such a right does in strictness exist, I think it devolves upon the Government to see that such powers are not exercised in flagrant violations of private rights and national justice, especially when, as in this case, in addition to interfering with the private rights alluded to, the Act overrides a decision of a court of competent jurisdiction by declaring retrospectively that the law always was and is different from that laid down by the Court."

THE REASONS EXAMINED.

In looking closely at the decision of the Minister of Justice, it will be seen that he based his disallowance of the Bill on three grounds : 1. That it interfered with private rights ; 2. That it was retrospective ; and 3. That it set aside a judgment of the Court. In regard to the

first ground it must be said that interference with private rights was never set up before by the Government as a reason for disallowance. By the British North America Act, "property and civil rights" are exclusively within the jurisdiction of the Local Legislature, and it was never pretended that such an interference was any ground for disallowing a Provincial Act. Speaking on the subject of provincial rights, Mr. Todd, in his valuable work on "Parliamentary Government in the Colonies," says :

"It was the intention of the Imperial Government (in passing the British North America Act) to guard from invasion all rights and powers exclusively conferred upon the provincial authorities, and to provide that the reserved right of interference therewith by the Dominion Executive or Parliament should not be exercised in the interest of any political party, or so as to impair the principle of local self-government."

Besides, during the last fifteen years, scores of Bills were passed interfering with private rights, none of which were disallowed. A few of these may be mentioned.

A QUEBEC ACT WHICH INTERFERED WITH PRIVATE RIGHTS.

A Bill passed by the Legislature of Quebec respecting the Union St. Jacques Society, Montreal, provided for the enforced commutation of the existing rights of two widow ladies, who, at the time it was passed, were annuitants of the society, and compelled them to take such a sum in lieu of their annuity as was, in the opinion of the Local Legislature, just. This Bill was sanctioned by Sir John Macdonald, notwithstanding its interference with private rights.

AN ONTARIO ACT WHICH INTERFERED WITH PRIVATE RIGHTS.

The Hon. George Goodhue, by his will, provided that his property should be divided in a particular way. Trustees were appointed to carry out the conditions and trusts of the will. The children were dissatisfied with the will, and by an agreement between themselves made other disposition of the estate ; in fact, made a new will for Mr. Goodhue. They applied to the Local Legislature for an Act to confirm such disposition. The Bill was protested against, as an extraordinary and unexampled interference with private rights, by one of the trustees on the ground that it was retrospective, that it created a new will, that it took the property out of the hands of one class of persons and gave it to another, and that it dealt with the property of minors outside the Dominion of Canada. The Local Legislature passed the Bill. The Lieutenant-Governor sanctioned it, but seemed to invite its disallowance by the Dominion Government, speaking of it in his despatch "as very objectionable, and forming a dangerous precedent." The trustees petitioned the Dominion Government to disallow it, but Sir John Macdonald, to whom, as Minister of Justice, the Bill was referred, reported that, "as it is within the competence of the Provincial Legislature," it should be left to its operation.

THE ONTARIO ACT THAT INTERFERED WITH MUNICIPAL RIGHTS AND PROPERTY.

Acting under the authority of a timber license received from the Government of the late Sandfield Macdonald, the same Peter McLaren whose case is now under consideration proceeded to cut down timber on the road allowances in his limit. An action was begun against him by the municipal corporations interested, on the ground that the road allowances were their private property. Judgment was

given in their favour by the Court of Common Pleas, on the ground that the Local Government had no right to grant a license to cut timber on property that did not belong to it. The case was carried to the Court of Appeal, but, while pending, the Local Legislature, under the direction of the late Sandfield Macdonald, and at the instigation of McLaren, passed an Act, one of the sections of which reads as follows:

"Every Government road allowance included in any timber license *heretofore* granted shall be deemed to be *and to have been* ungranted lands."

Here was property that belonged to a municipality leased by the Government to a private individual, and, while the case was pending before the Courts, the Legislature passes an Act transferring the property from the municipalities, to which it was held by the Courts to belong, to this same Peter McLaren. The second section provided:

"The licensee shall be deemed to have and *to have had* all rights in the trees, timber, lumber thereon, or cut thereon, as if the same were cut on any patented land of the Crown."

That was an Act which was retrospective in its operation, which directly interfered with private rights, which took property from one person and vested it in another without compensation, and which overruled the laws of the land, the rights of private parties, and the judgment of the Court. The Corporation of the County of Frontenac petitioned against the Act, but Sir John Macdonald allowed it with all its objectionable features. In his memorandum to Council on this Bill he said:

"As it is clearly within the competence of the Local Legislature, the undersigned reccommends that it be left to its operation."

THE NEW BRUNSWICK SCHOOL BILL.

Again, by an Act passed by the Legislature of New Brunswick in 1871, the Roman Catholic population of that Province felt that their rights were encroached upon by being required to contribute for the maintenance of a system of education in regard to which they had conscientious scruples. Looking at the matter purely from a constitutional stand-point, Sir John Macdonald said on the 20th January, 1872:

"The Provincial Legislatures have exclusive powers to make laws in relation to education. . . . It may be that the Act in question may act unfavorably on the Catholics or on other religious denominations, and if so, it is for such religious bodies to appeal to the Provincial Legislature, which has the sole power to grant redress. . . .

"The sole matter which presented itself to the Government was whether, according to the British North America Act of 1867, the Legislature of New Brunswick had exceeded its powers. As the officer primarily responsible on such subjects, he could only say that he had taken uniform care to interfere in no way whatever with any Act passed by any of the Provincial Legislatures if they were within the scope of their jurisdiction. There were only two cases, in his opinion, in which the Government of the Dominion was justified in advising the disallowance of local Acts. First, if the Act was unconstitutional, and there had been an excess of jurisdiction; and, second, if it was injurious to the interests of the whole Dominion.

"In the case of measures not coming within either of these categories, the Government would be unwarranted in interfering with local legislation

"In the present case there was not a doubt that the New Brunswick Legislature had acted within its jurisdiction, and that the Act was constitutionally legal, and could not be impugned on that ground.

"On the second ground which he had mentioned in which he considered the Dominion Government could interfere, it could not be held that the Act in any way prejudicially affected the whole Dominion, because it was a law settling the common school system of the Province of New Brunswick alone.

"The Government of the Dominion could not act, and they would have been guilty of a violent breach of the constitution if, because they held a different opinion, they should set up their judgment against the solemn decision of a Province in a matter entirely within the control of that Province."

PROVINCIAL RIGHTS INVADED.

It is quite clear that the disallowance of the "Streams Bill," as it is usually called, was a great outrage upon the right of the Provinces to self-government:

1. Because the Bill was admittedly within the competence of the Provincial Legislature.

2. It did not "take one man's property and give it to another" in the sense alleged of confiscating McLaren's property; on the contrary, it provided compensation based on the value of the improvements made, the cost of maintaining such work, the interest upon the investment, and all other just considerations.

3. Even if the Bill had been an invasion of private rights, it was not competent for the Dominion Government to disallow it, on the basis laid down by Sir John Macdonald himself, and according to the many precedents of the Department of Justice during the last fifteen years.

4. Although the Act had interfered with the decision of a court of competent jurisdiction, yet that circumstance would not bring it within the class of cases stated by Sir John Macdonald in 1868, as those in regard to which the prerogative of disallowance should be exercised. But since the disallowance the Court of Appeal has reversed the judgment of the Court of Chancery, and held that McLaren never had any right to the use of the stream, except such as was given to the whole world. The judgment of the Court of Appeal contains the following statement:

"Having reached the conclusion that all streams are by public authority dedicated as highways to at least the extent essential to the defence in this action, I have only further to remark that when the obstruction which stood in the way of the enjoyment of the legal right is removed, when the traveller by land, or lumberer seeking to float his lumber down a stream, finds the highway unobstructed, he is at liberty, in my judgment, to make use of it without inquiring by whom, or with what motive, the way has been made practicable. He finds the rock on the road allowance blasted, or the chasm that crossed it bridged, and he pursues his journey along the highway thus improved; or he finds that the freshet covers all obstacles with a sufficient depth of water, and he floats his logs down the highway thus made useful. It may be in appearance and perhaps in reality rather hard on the man at whose expense what was a highway only in legal contemplation becomes one fit for profitable use, that he has to allow others to share in the advantage without contributing to the cost. That is, however, a matter for his own consideration when he makes the improvement."

WERE LIKE BILLS DISALLOWED BY LIBERALS?

But it is said that during the Liberal Administration, like bills were disallowed, and that the Liberal party have no right to complain